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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 August 1997, at 10 a.m.

Chairman: Mr. BENGOA

later: Mr. PARK

later: Mr. BENGOA

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The meeting was called to order at 10.20 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

Statement by the Chairman on the situation of human rights and the conclusion of the peace negotiations in Guatemala

1. The CHAIRMAN announced that the Sub-Commission had authorized him to make the following statement.

2. It was a matter of joy and great satisfaction to the people of Guatemala and the international community that the Agreement on a Firm and Lasting Peace had been signed in Guatemala City on 29 December 1996, bringing an end to the internal armed conflict that had lasted 36 years and concluding the negotiating process that had been initiated in April 1991. The Government of Guatemala and the URNG, as well as the United Nations moderator, the Group of Friendly Countries and the Civil-Society Assembly should be congratulated on their endeavours.

3. The Sub-Commission also welcomed the conclusion of the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, which it hoped would establish a basis for the solution of the country's social and economic problems, as well as for security and the administration of justice, thus assuring the continuity and strength of the peace-building process in Guatemala.

4. Special gratitude and support was owed to the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) for its work in verifying compliance with the agreements concluded between the Government and URNG and for its report to the Secretary-General (A/51/936).

5. He recalled that on 20 August 1996, upon learning of the agreement reached between the Government and URNG, the Sub-Commission had adopted decision 1996/106 on monitoring the transition to peace in Guatemala, by which its Chairman had been authorized to issue a statement on the situation of human rights and the progress of the peace process in Guatemala, under agenda item 6, and to urge the Government of Guatemala to intensify its efforts to combat and to prevent violations of fundamental human rights, particularly those affecting the right to life and to the integrity and security of the person; to continue to combat impunity, to remove those persons mainly responsible for human rights violations from their posts and to bring them to justice; and to prevent the proclamation of amnesties or of any other mechanism that granted impunity to violators of human rights. The Sub-Commission had also encouraged the Government of Guatemala and URNG to plan and implement, in the relevant negotiations, arrangements for a ceasefire, the demobilization of military personnel and their return together with former combatants to the civilian life of the country, guaranteeing their

full enjoyment of civil and political rights. The Sub-Commission had also decided to continue to follow the development of events in Guatemala and to observe the building of a firm and lasting peace.

6. He was gratified to note that the recommendations contained in the decision and the statement had been heeded by the Government and URNG, with the result that with the conclusion of the Agreement on a Firm and Lasting Peace and the Comprehensive Agreement on Human Rights, the following agreements had also come into force: the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict; the Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer; the Agreement on Identity and Rights of Indigenous Peoples; the Agreement on Social and Economic Aspects and Agrarian Situation; the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society; the Agreement on the definitive ceasefire; the Agreement on Constitutional Reforms and the Electoral Regime; the Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca; and the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements. It was also gratifying to note the progress made since the conclusion of the Agreement.

7. At its fifty-third session the Commission on Human Rights had turned its attention to human rights in Guatemala. In its resolution 1997/51 it had requested the Secretary-General to send a mission to Guatemala at the end of 1997 to report on the evolution of the human rights situation in Guatemala in the light of the implementation of the peace agreements, taking into account the verification work done by MINUGUA and the information submitted by the Government of Guatemala, the Follow-Up Commission on compliance with the peace agreements, the political organizations and the non-governmental human rights organizations, as well as on the implementation of the agreement on the provision of advisory services in the field of human rights signed by the Government of Guatemala and the United Nations High Commissioner for Human Rights, with a view to concluding the consideration of the case of Guatemala in the agenda of the Commission. The decision of the Government to provide all facilities to the mission was to be welcomed. In his view, and in that of both parties, the mission could include members of the Sub-Commission.

8. The Sub-Commission recognized the efforts of the Government and urged it to continue its policy of implementing measures to protect and promote human rights and fundamental freedoms, to continue to take action against poverty and to eradicate extreme poverty and to increase its efforts to overcome the marginalization and discrimination suffered by the indigenous peoples of Guatemala.

9. The Sub-Commission was, however, concerned that despite those efforts there remained problems in respect of achieving the full enjoyment of human rights in Guatemala. The Government's considerable efforts to take action against crime and impunity had achieved only partial results. The persistence of a general level of criminal violence continued to make for a serious lack of security and of confidence in the institutions of a constitutional State. A sustained effort was required to achieve a significant improvement, but the

Sub-Commission welcomed the fact that both parties had committed themselves to making Guatemala a country in which human rights and fundamental freedoms would be fully respected and protected. Both parties had undertaken to obtain significant results by the time of the Commission's fifty-fourth session. Accordingly, the Government had indicated that, in August 1997, it would set up a permanent forum for the exchange of views with governmental and non-governmental human rights organizations which would jointly analyse measures to be taken for the protection and promotion of human rights. The Centre for Human Rights was also being requested to implement the agreement on the provision of advisory services in the field of human rights signed by the Government of Guatemala and the High Commissioner for Human Rights.

10. The Sub-Commission also welcomed the establishment on 31 July of the Clarification Commission whose task would be to clarify objectively and impartially human rights violations and acts of violence that had caused the Guatemalan population to suffer during the armed conflict. It was a momentous step; the Sub-Commission would cooperate fully with the Clarification Commission and would supply both information gathered by its members and advisory services in the field of human rights, when appropriate. The Sub-Commission therefore requested its experts to include a consideration of Guatemala in any reports that they might submit on various themes, as an example of a country in the process of transition to the full enjoyment of human rights. It also requested the Government, URNG and all other interested parties to extend full cooperation and provide information to the Clarification Commission in order to clarify past human rights violations. It particularly urged Guatemalan society and the international community to provide any available information, including confidential information. It also called on the bodies concerned with the follow-up on compliance with the peace agreements to allow the Sub-Commission, which had a profound interest in the building of peace and full respect for human rights in Guatemala, to make their reports available to it.

11. The Sub-Commission and he, as its Chairman, congratulated the Government, URNG and the people of Guatemala on the extremely positive steps that they had taken and were taking. It fully appreciated the support given by the international community to the peace process and urged it to continue and to increase that support. The Sub-Commission was confident that the international community would provide the economic resources required to implement all the agreements concluded since the initial agreement in Mexico City in April 1991.

12. It was of particular importance that the Government of Guatemala and Guatemalan society should, with the support of the international community, continue its work to integrate the members of URNG completely into civilian life in conditions of dignity and security. All ex-combatants and demobilized members of the Guatemalan armed forces should also be given a full opportunity to be integrated into civilian life under programmes contributing to national development.

13. The Sub-Commission, in conclusion, wished for Guatemala the full enjoyment of human rights, strong democratic institutions, full development for all its population and the building and consolidation of peace.

14. The CHAIRMAN invited the Deputy Minister for Foreign Affairs of Guatemala and the representative of Unidad Revolucionaria Nacional Guatemalteca to address the Sub-Commission.

15. Mr. AGUILERA PERALTA (Guatemala) said that his country had been a topic of study and debate within the Sub-Commission for several years, as part of the effort made by the international community, and particularly the United Nations system, to accompany the Guatemalan people on the path to democracy and peace. It was therefore appropriate for him to begin by expressing, on behalf of his Government, its deep appreciation of the Sub-Commission's sustained efforts on behalf of human rights in Guatemala. That work had been fruitful and the current session was the last at which the Sub-Commission would concern itself with the situation in Guatemala.

16. The successful conclusion to the peace negotiations, culminating in the Agreement on a Firm and Lasting Peace, marked a new stage in the history of Guatemala; with the achievement of national reconciliation, the main task of all Guatemalans had become a common quest for a strong constitutional State, the implementation of a culture of peace, the pursuit of the common good and sustainable economic growth with justice.

17. The enjoyment of human rights was central to a peaceful social order. The Government had therefore made every effort to give full force to domestic and international law, especially the standards contained in the Constitution, domestic legislation and the Comprehensive Agreement on Human Rights. There could be no democracy or constitutional State without a solid foundation of the full enjoyment of human rights. Guatemala had not only the will to promote human rights but also the necessary institutional structure. It had ratified most international human rights treaties and had acquired its own watchdog for safe conduct in human rights, the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), whose chairperson was present. The Human Rights Procurator had a vital function and had recently been elected to his post for the fourth time. MINUGUA also deserved the gratitude of the Government for the capable and objective way in which it carried out its mission of following up on human rights. He also noted that Guatemala had many organizations that were concerned with the promotion and protection of basic human rights.

18. Guatemala had passed through several dark periods in its history, when authoritarianism and armed conflict had given rise to serious and continued violations of human rights and other criminal acts that brought suffering to the civilian population. All Guatemalans were therefore determined that such times should never return and that the peace, so long desired, would be synonymous with total respect for human rights. The Government of the President of Guatemala, Alvaro Arzú, considered its most important aims to be the strengthening of full democracy, building peace and national reconciliation with the full application of human rights. The Sub-Commission could rest assured that those aims, in full harmony with the peace agreements, reflected the society that was already being built in Guatemala.

19. Mr. ZAPATA (Unidad Revolucionaria Nacional Guatemalteca - URNG) said that URNG viewed with enthusiasm and optimism, following the conclusion of the Agreement on a Firm and Lasting Peace, the historic opportunity offered to Guatemalans of laying the foundations for the construction of a new, multi-ethnic, multicultural and multilingual nation. The Sub-Commission was concluding 15 years of work for human rights, democracy and peace in Guatemala, for which URNG was extremely grateful. The case of Guatemala had enabled the Sub-Commission to extend its strictly humanitarian approach to the consideration of the causes of the human rights violations and the responses to them made by people to whom other forms of political struggle were closed. In 1982, when the armed conflict was at its height, the Sub-Commission had taken up the case of Guatemala. Its resolutions, along with other important initiatives by the international community, had been helpful in confronting the massive campaign of human rights violations that had typified Guatemala for many years. It had also contributed, from 1990, to creating an international awareness of the need to find a negotiated political settlement to the conflict.

20. URNG concurred with the Government in recognizing the progress made on human rights, as an outcome of the negotiations; but it noted that the progress was still insufficient and did not fully meet the needs and expectations of the people. URNG had therefore suggested an international component to the NGO human rights forum originally proposed by the Government of Guatemala through (COPREDEH), and which had been expanded and given a wider-ranging agenda as a result of URNG's suggestion that it should become a forum for society at large. Inputs by international experts and NGOs could be most useful for its development.

21. The Sub-Commission had also made an important contribution to the development of the substantive agreements that had not yet been implemented, especially the Agreement on Identity and Rights of Indigenous Peoples, by reason of its importance in the Guatemalan situation and its direct links with the topics studied by the Sub-Commission. URNG would ensure that the experts were kept informed about progress and obstacles in the implementation of the Agreement on a Firm and Lasting Peace. As signatories of the Agreement, URNG reaffirmed its political will to continue contributing to its implementation, as it had done thus far. It considered that the current phase in the implementation of the Agreement would determine the future of the peace process in Guatemala.

22. The end of the war, the progress in demilitarization and the transition to democracy should lead to substantive agreements which would modify the structural economic, social and political conditions that had been at the roots of the prolonged and bloody armed conflict. There was, however, some resistance from traditional elements holding economic power, who had no interest in seeing peace and democracy leading towards social justice. That was why an international component was so important and should continue, so that the Government could confront that resistance and with the support of the public overcome the obstacles put up by those whose actions ran counter to the peace process.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (continued) (E/CN.4/Sub.2/1997/18)

23. Mr. JOINET said that he fully endorsed Mr. Eide's views and proposals regarding agenda item 8 and would therefore refrain from making a statement on that item.

24. Mr. ANITSEV (International League for the Rights and Liberation of Peoples) said that the discriminatory practices of the Government of India against the Dalits, a minority of over 200 million people, had been highlighted in the reports of the Special Rapporteur on religious intolerance (E/CN.4/1997/91/Add.1) and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/1997/71). A representative of the Dalit Liberation Education Trust had drawn the attention of the Working Group on Minorities at its third session to Presidential Order No. 1950, article 19, which introduced a further form of discrimination among Dalits. His organization called on the Sub-Commission to request the Government of India to remove all laws that discriminated against and among the Dalit people.

25. Ms. Kim Chun RAN (International Association of Democratic Lawyers) said that she was also speaking on behalf of the Japanese Association for Human Rights of Koreans in Japan. Despite continuous requests, the Japanese Government had not made the slightest change in its policy of severe discrimination against Koreans living in Japan. In a recent interview with a Japanese daily newspaper, an official of the Japanese Ministry of Education had stated that American schools in Japan were beneficial for the State of Japan but Korean schools were not. Foreign schools in Japan were treated differently from government-designated schools and, among foreign schools, Korean schools suffered the most severe discrimination.

26. About 680,000 Koreans lived in Japan. The majority were descendants of the slave labour force imported by Japan during its period of colonization of the Korean Peninsula. His organization strongly urged the Japanese Government to cease its policy of discrimination against Koreans living in Japan and requested the Sub-Commission to give the issue its continued attention.

27. Ms. MOYA (American Association of Jurists) said that some 200 million Afro-Americans, descendants of the black slaves on whose labour the socio-economic organization of colonial territories and peoples had depended, continued to be the victims of a policy which turned them into a socially invisible minority and legitimized the psychological violence of racial discrimination perpetrated by the ruling majorities. Such discrimination led to social exclusion in the form of unequal access to employment, health-care services and markets for their products, as well as unequal participation in national decision-making machinery and in the formulation and implementation of socio-economic policies.

28. In Honduras, the authorities had promised in October 1996 to address the land problems of the Garifuna and black communities and to hand over 20 titles to land by April 1997. No such action had been taken to date.

29. In Brazil, big landowners continued to drive Afro-Brazilians off the land, using methods that sometimes included murder.

30. On the Pacific coast of Colombia, the region with the largest concentration of Afro-Americans, clashes between guerrilla and paramilitary groups had displaced some 4,000 people who had been forced to seek refuge in the jungle. Disappearances and killings had further concentrated land in the hands of the paramilitary groups and their financial backers.

31. In the United States of America, the prisons were full of African American "suspects", who were presumed to be guilty instead of innocent as the law required.

32. Mr. Eide, in his document entitled "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities" (E/CN.4/Sub.2/1993/34/Add.4) and Mr. Chernichenko, in document E/CN.4/Sub.2/AC.5/1997/WP.1, had presented interesting suggestions as to how the institutionalized problems of minorities might be addressed. The Sub-Commission should not confine its creativity to the adoption of recommendations but should alert States and societies to the need for an alternative response to the usual repressive reaction to any demand by a sector of the population for greater autonomy so that it could enjoy its rights to the full.

33. Mr. MALIK (International Islamic Federation of Students' Organizations) said that there were three main religious groups in Kashmir: the Muslim majority, the Hindus, who were known as Pandits, and the Buddhists. Peoples of different faiths had coexisted peacefully in Kashmir for centuries. The current crisis was not a communal conflict between the Muslim majority and the Hindu minority but stemmed from resistance to an alien occupation.

34. When the Kashmiris had begun the current phase of their struggle for self-determination in 1989, the then Indian Governor had played on the fears of the Pandit community so that when they fled from Kashmir the resistance could be misrepresented as an anti-Hindu campaign. The Pandits were currently spread throughout refugee camps in Indian territory bordering Kashmir. As conditions in the camps were reportedly very bad, the suffering Pandits were paraded to visiting foreigners as examples of the depredations of so-called fundamentalists in Kashmir.

35. The Kashmiri Muslims were acutely conscious of the Pandits' suffering and issued an open invitation to them to return to their homes, where they would be rehabilitated in safety and honour.

36. Mr. KHALIFA commended the Working Group on Minorities on giving such prominence to the issue of oppressed and dispossessed minorities and on generating sympathy for their plight.

37. He feared, however, that its zeal and efficiency might paradoxically do the cause of minorities a disservice. It was an issue that must be approached with great tact because it lent itself to exaggeration, falsification and manipulation by the ill-intentioned. Besides, as more and more tiny entities laid claim to nationhood, it conjured up the prospect of a mushrooming of

mini-States and a United Nations with as many as 3,000 Member States. The Sub-Commission should on no account give the impression that it was encouraging such trends.

38. For example, if Quebec ever seceded from Canada, the Cree and Inuit peoples intended to secede in their own right, taking along with them a sizeable portion of the mineral wealth and hydroelectric power of Quebec. He dreaded to imagine the consequences of an explosion of ethnicity in a huge country such as China, which officially acknowledged 55 nationalities. And who was likely to benefit? Certainly not the people. Prevention of discrimination against minorities was certainly a worthy cause but should not lead to the carving-up of nations. He also drew attention to the fact that between 10 and 13 million Muslims currently lived in Europe, a development that had already led to severe cultural conflict, with grave overtones of racism.

39. He merely wished to sound a note of caution. Certain circles were exploiting the United Nations human rights machinery for their own ends, playing people off against one another and creating havoc in particular countries. He trusted that the Working Group would remain aloof from innuendo and hearsay, disregarding the fabrications that could be channelled through the media. Reports should place greater emphasis on reconciliation, enjoining patience on the impatient and offering insight to the deceived, stressing the importance of the integrity of States and the maintenance of strong viable entities. A balanced position, which took account of the interests of both minority groups and States, must be adopted.

40. He was unhappy with the final paragraph of the report (E/CN.4/Sub.2/1997/18), which referred to research into particular situations, including visits to countries where appropriate. He was unsure whether the Working Group's mandate allowed for such initiatives and was interested in hearing the views of other members of the Sub-Commission on the matter.

41. He was not convinced of the need for a general definition of a minority. The subject should be approached on a case-by-case basis and the notion of a minority should not be blown out of proportion. The mere establishment of a Working Group should not imply that the Sub-Commission was encouraging groups to set themselves up as a minority under international law.

42. It was unthinkable that at a time when Europe, with its mighty States and viable economies, sought strength through unity, tiny States should be sweet-talked into seeking independence; such so-called independent States became even weaker with separation, being more susceptible to foreign manipulation, which had become an art. Would-be manipulators stressed minor divisions, driving a wedge through society, and thus brought into being a new minority, whose case would have to be referred to the Working Group. The decision as to whether a given group was a minority should be taken case by case. For example, a religious minority was usually also an ethnic, cultural or linguistic minority, with its own identity and feeling of distinction. If it was purely and simply a religious minority, however, sharing every other aspect of history and tradition with the rest of the population, in his view it was unwarranted to term it a minority under international law; to do so was to open the gates of hell. All that distinguished them was a religious

belief; in every other way they looked and lived like their neighbours. That was why he insisted on caution: declaring such groups to be minorities benefited no one but manipulators, whereas the Sub-Commission's task was to push for reconciliation and adjustment, not to carve up States and stir up animosities among peoples that had long lived in harmony.

43. His comments were not meant to detract from the excellence of the work done by an exceptional Working Group, which definitely deserved an extension to its mandate for at least two years, after which a further decision could be taken.

44. Mr. LINDGREN ALVES said that, with the shift in emphasis from inter-State to civil conflicts in the international arena, the question of minorities had become perhaps the most important issue considered by the Sub-Commission, and one fundamental to the maintenance of peace and stability at international as well as national level. He thus welcomed the report of the Working Group on Minorities contained in document E/CN.4/Sub.2/1997/18, and the oral presentation by Mr. Eide, its Chairman-Rapporteur. He particularly endorsed Mr. Eide's important observation that violence by minority groups could only be detrimental to their cause. It was a matter of concern that some groups that espoused violence, in total denial of human rights, had even taken the floor in the Sub-Commission.

45. Referring to paragraph 98 of the report, in which the Chairman-Rapporteur was recorded as noting that there was no general requirement, or expectation, to change from jus sanguinis to jus soli, he said that in his view the Sub-Commission and the Working Group would inevitably have to address that question sooner or later; for the former system had now been proved to be an important source of discrimination. Historically, jus sanguinis had been of fundamental importance, but times had changed, and the international community was now seeking regional, indeed universal, cultural integration. The extent to which jus sanguinis was a source of discrimination was thus a question that must be studied.

46. Closely related to that question was the issue of citizenship. In paragraph 97 of the report, Mr. Eide was quoted as observing that citizenship was not a precondition for the enjoyment of all human rights. That was indeed true, as the Universal Declaration of Human Rights confirmed. However, it was not clear who would provide effective protection of the human rights of stateless persons, given that the resources available to the international community for that purpose were extremely limited. While in the idealized world of international forums it was possible to go beyond the concept of citizenship, in the real world Hannah Arendt's dictum that the right to citizenship was the right to have rights still held true.

47. He endorsed almost all of the conclusions and recommendations contained in the report, particularly regarding the fundamental importance of educational measures. However, he had one small reservation with regard to paragraph 112, which recommended that the Committee on the Elimination of Racial Discrimination (CERD) should discuss, inter alia, the matter of allocation of citizenship and its consequences with respect to indirect discrimination on grounds of race, colour, descent or ethnic or national origin. While he did not oppose that useful proposal, he nevertheless

considered that far higher priority should be given to commissioning a study by CERD of the system of jus sanguinis and the denial of citizenship as obvious causes of direct discrimination.

48. Mr. MAXIM said that he had been impressed by the serious and studious spirit in which the Working Group on Minorities approached its work, and by the important contributions made by Mr. Eide, the Chairman-Rapporteur, to its proceedings. In view of the importance of the question of minorities, he supported the idea that the Working Group should become a permanent body, in which the Sub-Commission could consider in greater depth matters that had hitherto sometimes been accorded insufficient attention. Mr. Khalifa had noted an unfortunate tendency for concepts associated with minorities to be manipulated by some in order to further their own ends. The Working Group was thus to be congratulated for delving more deeply into some of those concepts so as to locate them in the context of contemporary international law. He was confident that it would continue the task of throwing further light on delicate issues that unfortunately often led to political problems and sometimes even affected relations between member States of the Organization.

49. Mr. HATANO said that he wished to make a few remarks about the touchy question of a definition of minorities. As was rightly pointed out in paragraph 100 of the Working Group's report, indigenous peoples and minorities shared common characteristics. Although the Sub-Commission had already concluded its consideration of agenda item 7 as such, he wished to revert to the question of indigenous peoples in relation to the question of a definition of minorities.

50. As a member of the Working Group on Indigenous Populations, he had agreed with the view that a definition of indigenous peoples was not only impossible but also undesirable at the current stage. In that regard, his position was thus substantially the same as that of Mr. Eide with regard to a definition of minorities. However, that agreement was conditional, in that he believed that it would be impossible and undesirable to have a legal definition only in the present circumstances. He had therefore stated in the Working Group on Indigenous Populations that international society would need a legal definition of indigenous peoples sooner or later - perhaps in 30 years' time, when the draft United Nations declaration on the rights of indigenous peoples had become a legally binding convention.

51. He wished to examine, first the possibility, and then the desirability, of coming up with a definition of minorities and indigenous peoples respectively. With regard to the possibility, he agreed with Mr. Yimer that, to begin with, it was practically impossible to have an abstract definition of the term "peoples". That was why it had as yet proved impossible to establish a clear legal concept of "self-determination of peoples". On the other hand, like Mr. Chernichenko - and unlike Mr. Yimer - he believed that it was perfectly possible to settle for a working definition of a concept. To take the concept of a "child" as an example, it was theoretically just as difficult to provide an abstract definition of the term "child" as to define peoples, minorities and indigenous peoples. Nevertheless, the drafters of the Convention on the Rights of the Child had succeeded in finding a working definition of the term, namely: "For the purposes of the present Convention,

a child means every human being below the age of 18" (art. 1 of the Convention). Furthermore, under Japanese law a child was defined as a human being below the age of 13 for the purposes of traffic legislation, below the age of 15 for the purposes of labour legislation, below the age of 18 for the purposes of child welfare legislation, and below the age of 20 for the purposes of family legislation. It could thus be seen that, even within a single country, a working definition could vary in accordance with the purpose of the respective laws. It was thus possible to have a number of working definitions of peoples, minorities and indigenous peoples. As members were aware, a former Special Rapporteur of the Sub-Commission, Mr. Martínez Cobo, had already provided a working definition of indigenous peoples. Why could similar working definitions not be adopted in the context of other topics?

52. As to the desirability of definitions, it was his personal view that definitions of minorities and indigenous peoples had been branded undesirable for two reasons. First, it had been claimed that the lengthy time needed to reach agreement on a definition would hinder the consideration and drafting of texts on the rights of minorities and indigenous peoples. That apprehension was rooted in the belief that there must be only one definition. If agreement could be reached on having a number of working definitions appropriate to each law or convention, that apprehension could easily be dispelled.

53. The second reason was that minorities and indigenous peoples feared that, once a yardstick had been adopted, some of their colleagues or comrades would inevitably be excluded from that category. However, such exclusion was not always necessarily undesirable. Several years previously, for instance, representatives of the Boer people had attended the Working Group on Indigenous Populations and had claimed that they were indigenous vis-à-vis the British colonizers who had subsequently settled in South Africa. Many participants, not least those with a more genuine claim to be indigenous, had found that claim ridiculous. Yet, as long as no definition of indigenous peoples existed other than the principle of self-identification, the Boers could not be excluded from the category of indigenous peoples.

54. Furthermore, a definition sometimes led to a group being, not excluded from, but included in, the category of minorities or indigenous peoples. For example, a representative of the Ainu Association of Hokkaido, Japan, had been chosen to deliver a speech before the United Nations General Assembly on the occasion of the inauguration of the International Year of the World's Indigenous People. In his view, therefore, the Ainu had already been acknowledged internationally as an indigenous people, although the Japanese Government had not accorded them such recognition on the grounds that there was as yet no internationally accepted definition of an indigenous people. (Paradoxically, it recognized them as a minority in spite of the similar lack of an internationally accepted definition of that term.) A working definition of indigenous peoples would thus help to enhance their legal status in Japan. Similar situations would arise throughout the world with regard to minorities, and a definition - even a working definition - would not work against their interests.

55. In conclusion, he noted that in paragraph 108 of the report the Working Group recommended that a manual should be prepared in, inter alia, minority

languages. In the light of his previous remarks, he wondered how it would be possible to prepare a manual in minority languages when no definition of a minority existed.

56. Mr. Park took the Chair.

57. Mr. EL-HAJJÉ said that the question of minorities was a complex one: in a recent publication, a French academic had identified no fewer than 9,000 minorities worldwide. The issue was also a sensitive one, in that it involved not only the rights and obligations of individuals and social groups, but also those of States. The Working Group on Minorities must therefore try to strike a balance between protecting the rights of individuals and groups and safeguarding the structures of States. However, he saw no evidence of any such attempt in paragraph 123 of the report. In his view, the work of the Working Group had not yet reached a stage at which it was possible to envisage monitoring, missions or interventions at domestic level; any such action would be premature. In that connection, it should be borne in mind that the First and Second World Wars had stemmed partly from minority issues. Nevertheless, he conceded that striking the requisite balance was not an easy task.

58. Nor was it easy to find a definition of minorities. Yet that task could not be shirked. A valid definition could emanate only from one or more of three authorities: an international authority, a State authority, or the group concerned, and the degree of authoritativeness of the definition varied depending on its source. Simply to speak of a "minority" was already a step towards a definition, and the same was true of "indigenous peoples". The studies undertaken by Mr. Capotorti offered a useful legacy in that regard, on the basis of which the Working Group could make further progress.

59. Above all, the Working Group should aim to promote the integration of minorities in a national framework. Minority groups' rights could be enhanced by improving their relations with the national community in a process of symbiosis. Without that symbiosis, differentiation would persist and peaceful solutions would remain elusive.

60. Mr. RAGHEB (Observer for the Islamic Republic of Iran) said that by its very essence the Sub-Commission had a mandate to protect minorities, but that it was difficult, if not impossible, to come up with a satisfactory definition of minorities. Article 27 of the International Covenant on Civil and Political Rights could be said to cover persons belonging to separate or distinct groups, well defined and long-established on the territory of a State.

61. Pursuant to Commission on Human Rights resolution 1986/20 of 10 March 1986, a Special Rapporteur had been appointed to examine incidents and governmental action in all parts of the world inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. His latest report, contained in document E/CN.4/1997/91, had been submitted to the fifty-third session of the Commission on Human Rights. In his delegation's view, the Special Rapporteur had taken a piecemeal view of the issue of religious

freedom and the question of sects, and his conclusions in that regard were unacceptable. Politically motivated groups which were not deep-rooted in a nation's culture and which had a history of instigating hatred and violence should not benefit from the protection afforded to religious sects. The Special Rapporteur should also investigate the recent defamation of the Holy Prophet of Islam and the Virgin Mary by the Zionist press in Al-Khalil, a clear manifestation of religious intolerance.

62. At its forty-eighth session, the Sub-Commission had considered the reports of the Working Group on Minorities contained in documents E/CN.4/Sub.2/1996/2 and 28. Inter alia, the Working Group had decided to commission the preparation of short studies on the content and scope of the core principles contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including the formulation of specific and concrete recommendations for their application in different countries and regions of the world. His delegation believed that such a study must be thorough and comprehensive, taking due account of all major legal and judicial systems and the principles, values and cultures of different societies.

63. Mr. ORUGEV (Observer for Azerbaijan) said that Azerbaijan was a multinational State where religious and ethnic minorities had enjoyed centuries of peaceful coexistence. All the great world religions were represented in Azerbaijan; chauvinism was alien to the Azerbaijani mentality and tradition of freedom of conscience and belief. Despite nine years of Armenian armed aggression, the social and economic difficulties of the transitional period and the problems of having to deal with millions of refugees, the Government continued to pursue a civilized national policy to protect the rights of each and every citizen. The Constitution, adopted by referendum in 1995, recognized that all citizens were equal before the law and guaranteed their rights irrespective of sex, race, nationality, belief, political views or social origin, as required by the Universal Declaration of Human Rights and other international instruments.

64. Representatives of national minorities had been returned to parliament and held important positions in the Government and in local administrative bodies. Minorities had their own cultural centres, financed from the State budget and a Presidential fund. Their languages were used in the printed and broadcast media and for teaching purposes.

65. The struggle against the Armenian aggressors and threats to Azerbaijani territorial integrity had actually united the minorities in the country. He pointed out that, outside Nagorny Karabakh, there were 30,000 Armenians living in Azerbaijan, of whom 20,000 lived in the capital, Baku.

66. No one should think that he was looking at the question of national minorities through rose-tinted spectacles. Problems remained to be solved, notably the social, economic and day-to-day problems facing national minorities, such as the severe lack of housing resulting from the influx of refugees. The help of the international community would be needed to eliminate the threat to national unity and create the necessary conditions for the success of profound democratic reforms in Azerbaijan.

67. Mr. AL-KAISSI (Observer for Iraq) said that the protection of the rights of minorities, including ethnic and religious minorities, had been at the heart of the Sub-Commission's work. As the century drew to a close, the issue of minority rights was assuming new significance, as certain hegemonic Powers tried to use the issue as a means of exerting pressure on developing countries or an excuse for violating the territorial integrity of certain countries.

68. The rights of minorities must be based on the principles of non-discrimination and respect for territorial integrity. The Government of Iraq had always been desirous of protecting the human rights of minorities, particularly those of the Kurdish minority. Indeed, the Iraqi Constitution recognized that the Iraqi people comprised two nations, the Arab and the Kurdish nations. The Constitution guaranteed the rights of minorities within the framework of national unity. In 1974, the Kurdish minority had been granted a degree of administrative autonomy. Kurdish cultural institutions had been established, Kurdish-language newspapers appeared and the Kurdish language was taught at an independent university. The rights of other minorities, such as the Turkmen and Assyrian minorities were also guaranteed.

69. The facts showed that the Government of Iraq implemented the provisions on minority rights in the relevant international treaties. Despite the aggression against Iraq in 1991 and the consequences of the subsequent embargo, the Government continued to seek a solution to the problems of the Kurdish minority through dialogue. Unfortunately, hegemonic Powers placed obstacles in the way of such dialogue in order to prevent agreement being reached. Thus, suffering as a result of the civil war between Kurdish parties continued. Demands to protect minority rights were inconsistent with action that prevented the Iraqi Government from carrying on its dialogue with the Kurds. The speech by the representative of the United States of America showed that there had been interference in the internal affairs of the Iraqi people, to the detriment of their territorial integrity and without thought for the destruction of villages and services and the displacement of Iraqis. There had also been many victims and much destruction as a result of the invasion by over 100,000 Turkish troops in the north of the country.

70. He recalled that his Government had cooperated with the Sub-Commission in the past in reporting on its efforts to end racial discrimination and to promote human rights in general and those of minorities in particular. All the relevant international agreements stressed the need for non-interference in the internal affairs of other countries and for territorial integrity to be respected. All countries should respect those agreements and allow Iraq to get on with solving its own problems and protecting human rights.

71. Mr. Bengoa resumed the Chair.

72. Mrs. TÓTH (Observer for Hungary) said that despite the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities five years earlier and despite the growing body of legislation on minority rights, it had proved difficult to apply in practice the principles contained in the Declaration. Coordinated measures were needed to promote the internalization of existing standards. The Working Group on Minorities offered the ideal forum for discussion, information-gathering, assessment and related activities aimed at addressing the underlying problems and ensuring that action was taken to prevent the

violation of minority rights. The Working Group could stimulate public awareness of the issue and encourage networking, with the International Labour Organization for instance, and the greater involvement of non-governmental organizations. It allowed Governments and minorities to come together to try to reduce the gap between the principles enunciated in the Declaration and the daily realities of violations of minority rights. She therefore strongly supported the extension of the Working Group's mandate.

73. Mr. QUAYES (Observer for Bangladesh) said that the protection of minorities and their rights was essential to the human rights question, with constitutional democracy perhaps providing the basic foundation for the protection of minority rights. In that context, his delegation attached special importance to the work of the Sub-Commission, and the Working Group on Minorities in particular. He recalled that resolution 1995/24 of the Commission on Human Rights authorized the Sub-Commission to establish an inter-sessional working group initially for a three-year period. It did not necessarily follow that the initial mandate of the Working Group had been exhausted with its third session in May 1997. Paragraph 14 of the report of the Working Group on its third session (E/CN.4/Sub.2/1997/18) was therefore inconsistent with that resolution, which provided for a third inter-sessional year. He reiterated the central importance of remaining faithful to the mandate provided by the Commission if the Working Group was to retain its effectiveness and credibility. The Commission had, in its resolution 1997/16, discreetly suggested that full implementation of the mandate was still wanting. In the same resolution, it had requested that the Working Group should take note of the Commission's deliberations on the item; from the report on the Working Group's third session, it was evident that it had not done so. He read out an extract from his delegations's statement at the fifty-third session of the Commission, which expressed its concern that the second session of the Working Group had been held without authority, ahead of schedule, and in the same inter-sessional period as the first, which was clearly not in keeping with its mandate. Moreover, the Centre for Human Rights, the Working Group and the Sub-Commission had shown no readiness to respond to concerns of a member of the Commission, so that Bangladesh had decided not to participate in the Working Group's second session despite the importance it attached to its work. He reiterated that the extension of the mandate of the Working Group would be premature, and said he hoped the Sub-Commission would give due consideration to his comments in its recommendations with regard to the Working Group.

74. Mr. SHEIKH (Observer for Pakistan) said that the new Government of Pakistan was committed to the promotion and protection of the rights of all minorities in Pakistan, to safeguarding their social, religious and economic interests and to affording them equal opportunities. It was making strenuous efforts to establish a tolerant society, to control the activities of armed groups and to promote religious harmony. Pakistan continued to be the target of indiscriminate terrorist attacks funded by foreign sources. The Government was therefore formulating a national plan to tackle gun-running, terrorism, sectarianism and smuggling.

75. With regard to the Shantinagar incident, the Prime Minister had visited the area personally, ordered the immediate arrest of those implicated, and given instructions for the payment of immediate and generous compensation to all victims and for the speedy repair of damaged churches and homes. Any

documents lost during the incident would be replaced. He would personally ensure that any grievances arising from the incident would be addressed if they were brought to his attention.

76. He said that the oft-quoted blasphemy law originated in laws introduced by the British in India in 1926, and was similar to laws in many other countries. No sentence had yet been carried out under the law, and the Government was determined to eliminate its abuse.

77. A national commission for minorities had been set up with the aim of, inter alia, considering laws and other procedural practices to address the grievances of members of any minority and to ensure that the places of worship of minority communities were kept in a functional condition. His Government was committed to ensuring that minorities lived in peace, harmony and freedom, with legal recourse available to them if they felt their rights had been affected in any way.

78. U LINN MYAING (Observer for Myanmar) said that Myanmar, a union of over 100 national races, still suffered from the tragic legacy of colonialism, which had set brother against brother and had caused some to take up arms against successive Governments, hindering further development. The Government of Myanmar was committed to restoring harmony into the Union and had persuaded practically all the armed groups to return to the legal fold and to contribute each in its own way to the development of their regions. A special ministry had been formed to implement programmes for the development of border areas and national races, who were enjoying unprecedented peace and well-being. The Government and the United Nations Development Programme (UNDP) had jointly implemented the Human Development Initiative I from 1994 to 1996, to improve health and education, the availability of clean water, sanitation and work opportunities for the national races in Rakhine State and Chin State. As a result of the success of the Initiative, a further development initiative, to be jointly funded by UNDP and the Government, was being formulated. Rural development projects had been carried out by the Government and the United Nations International Drug Control Programme (UNDCP) in Eastern Shan State. The infrastructure in various sectors was being developed and upgraded. The Government was making a concerted effort, financed primarily from its own resources, to foster the development of national races.

79. The rights of national races would be taken fully into account in the Constitution which was in the process of being drawn up. One of the fundamental principles already agreed upon was that certain national races would have self-administered areas.

80. The people and Government of Myanmar were by tradition and by practice tolerant and supportive of all religious faiths. The major events of the various religions were official holidays, and the custom was for religious communities to help and even participate in each other's celebrations. There was a total absence of discrimination based on religion, as had been noted by the Independent Expert on Myanmar. She had also noted that all national races were well represented in all strata of society. The Government of Myanmar was not only protecting human rights, but also restoring them to those who had lost them through no fault of their own.

The meeting rose at 1 p.m.